



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Matthew T. Sanderson, Esq.
Caplin & Drysdale
One Thomas Circle, N.W.
Suite 1100
Washington, D.C. 20005

JUL 31 2018

RE: MUR 6893
Winning the Senate PAC

Dear Mr. Sanderson:

This is in reference to the complaint you filed with the Federal Election Commission on October 21, 2014, concerning Winning the Senate PAC and Jason F. Emert in his official capacity as treasurer ("WTS"). The Commission found that there was reason to believe WTS violated 52 U.S.C. § 30124(b), a provision of the Federal Election Campaign Act of 1971, as amended, and conducted an investigation in this matter. On July 19, 2018, a conciliation agreement signed by treasurer Emert was accepted by the Commission. Accordingly, the Commission closed the file in this matter on July 19, 2018.

Documents related to the case will be placed on the public record within 30 days. *See Disclosure of Certain Documents in Enforcement and Other Matters*, 81 Fed. Reg. 50,702 (Aug. 2, 2016). A copy of the agreement with WTS is enclosed for your information.

If you have any questions, please contact me at (202) 694-1548.

Sincerely,

A handwritten signature in cursive script that reads "Elena Paoli".

Elena Paoli
Attorney

Enclosure
Conciliation Agreement

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	MUR 6893
Winning the Senate PAC and)	
Jason F. Emert in his official capacity)	
as treasurer)	

CONCILIATION AGREEMENT

This matter was generated by a complaint filed with the Federal Election Commission ("Commission"). The Commission found reason to believe that the Winning the Senate PAC and Jason F. Emert in his official capacity as treasurer (collectively "WTS") violated 52 U.S.C. § 30124(b).

NOW, THEREFORE, the Commission and the Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 52 U.S.C. § 30109(a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Winning the Senate PAC is an independent-expenditure-only federal political committee ("IEOPC").
2. Jason F. Emert is the treasurer.

3. WTS formed in September 2014 as a project of HardenGlobal, a now-defunct political consulting firm. WTS sought to raise funds to support Republican Senate candidates in the November 2014 general election.

4. In September and October 2014, WTS solicited contributions by sending emails to potential contributors. Some of those emails appeared to be sent from federal candidates. In many instances, WTS did not obtain permission from those candidates to use their names in the solicitation emails or, in some instances, misled employees of those candidates to obtain their purported authorization based on misrepresentations about WTS. In some instances, WTS did not disclose that it was an IEOPC.

5. For example, on October 10, 2014, WTS sent an email with the subject line "Nightmare" and the "from" line "Cruz/Paul/Lee/Rubio (Senate) stokes@winningthesenate.com." The text of the email states, in part, "Contribute \$25 To Be Spent Where It's Needed Most," which was hyperlinked to a contribution page, and, "Help elect conservatives who will join Mike Lee, Rand Paul, Ted Cruz, Marco Rubio, and others to end our national nightmare."

6. On October 12, 2014, WTS sent a follow-up email "from" the same four senators, with the subject, "We know you ignored this email on Friday. Take a look now." This email copied the October 10, 2014, email, including the header, but omitted the email address in the "from" line, so the email stated that it was from "Cruz/Paul/Lee/Rubio (Senate)."

7. At least three federal candidates complained to WTS about its practices, told WTS that it did not have that candidate's authorization, and demanded that WTS stop using the candidate's name.

8. WTS's disclosure reports indicate that it spent \$40,064 on independent expenditures supporting six federal candidates in the 2014 general election. It also disclosed

making operating expenditures totaling \$64,678, the majority of which were paid to HardenGlobal.

9. The Federal Election Campaign Act of 1971, as amended (the "Act") and Commission regulations prohibit persons from "fraudulently misrepresent[ing] the person as speaking, writing, or otherwise acting for or on behalf of any candidate or political party or employee or agent thereof for the purpose of soliciting contributions or donations[.]" 52 U.S.C. § 30124(b)(1); 11 C.F.R. § 110.16(b)(1). "[A] representation is fraudulent if it was reasonably calculated to deceive persons of ordinary prudence and comprehension." *FEC v. Novacek*, 739 F.Supp.2d 957, 961 (N.D. Tex. 2010).

10. IEOPCs are prohibited from making contributions to federal candidates and their authorized committees. *See* 52 U.S.C. §§ 30116(f), 30118(a); Advisory Op. at 2010-11 (Commonsense Ten) at 2-3.

11. Senators Paul, Cruz, and Rubio did not authorize or permit WTS to use their names in WTS solicitation emails.

V. Respondent fraudulently misrepresented that federal candidates sent and endorsed emails soliciting funds for WTS in violation of 52 U.S.C. § 30124(b). Respondent will cease and desist from violating 52 U.S.C. § 30124(b).

VI. Respondent will pay a civil penalty to the Federal Election Commission in the amount of Fifteen Thousand dollars (\$15,000), pursuant to 52 U.S.C. § 30109(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any

requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lisa J. Stevenson
Acting General Counsel

BY: Kathleen Guith
Kathleen Guith
Associate General Counsel
for Enforcement

7/25/18
Date

FOR THE RESPONDENT:

J. F. Emert
Jason F. Emert
Treasurer, Winning the Senate PAC

07/09/2018
Date